




CLOSED CASE SUMMARY

ISSUED DATE: JULY 2, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0006

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.220-POL-2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained - Lawful and Proper (Expedited)
# 2	6.220-POL-2 Conducting a Terry Stop 7. Under Washington State Law, Traffic Violations Will Not Be Used as a Pretext to Investigate Unrelated Crimes	Not Sustained - Unfounded (Expedited)
# 3	5.140-POL-2 Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged Named Employee #1 (NE#1) unlawfully stopped him. The Complainant also alleged the contact was pretextual and that NE#1 engaged in bias-based policing by stopping him because he was Black.

ADMINISTRATIVE NOTE:

This case was approved for Expedited Investigation. That means OPA, with the Office of Inspector General's agreement, believed it could reach and issue recommended findings based on its intake investigation without interviewing the involved employees. As such, OPA did not interview the involved employees in this case.

SUMMARY OF INVESTIGATION:

OPA reviewed the OPA complaint, incident report, and body-worn video (BWV). OPA did not interview the Complainant, who was incarcerated.

A. OPA Complaint

On January 3, 2023, Witness Supervisor #1 (WS#1), a sergeant, sent an OPA complaint via Blue Team. WS#1 wrote NE#1 saw a van parked at an angle restricting roadway traffic. WS#1 also wrote NE#1 believed the van was stolen and that its driver—the Complainant—was intoxicated, based on NE#1 seeing what he thought was methamphetamine on the van's center console. WS#1 noted that NE#1 arrested the Complainant and that the Complainant alleged NE#1 only contacted him because the Complainant was Black.



B. Incident Report

In summary, NE#1's incident report stated:

On January 3, 2023, NE#1 observed a van parked on the west side of Colorado Avenue South with its rear end blocking traffic. The van was Business #1's—a plant business—company vehicle. Its headlights were on. NE#1 indicated the location was an RV encampment site and a "hotspot" for drug activity and stolen cars.

NE#1 contacted the Complainant and told him the van was blocking the roadway. The Complainant said he was about to drive off. NE#1 saw a torch-style lighter in the Complainant's hand and a white crystalline substance on the van's center console. NE#1 believed the white crystalline substance was methamphetamine. NE#1 also thought the van to be running because he observed illuminated lights on the gauge cluster.

The Complainant told NE#1 the van belonged to his boss. NE#1 asked where he worked, and the Complainant replied, "[Business #1]." NE#1 instructed the Complainant to turn off the van. The Complainant reached toward the ignition and turned the van off without keys. NE#1 asked the Complainant how he turned the van off, and the Complainant replied that the ignition was "fucked up." NE#1 instructed the Complainant to step out of the van. As the Complainant exited the van, he dropped a glass "bubbler" style pipe. NE#1 knew that type of pipe was commonly used for smoking methamphetamine. NE#1 also saw suspected narcotics residue inside the pipe.

After exiting the van, the Complainant admitted he did not work for Business #1. NE#1 ran the Complainant's name and found a felony warrant. NE#1 arrested the Complainant for operating a motor vehicle while under the influence of drugs and possessing a stolen vehicle. NE#1 screened the arrest with WS#1. NE#1 also checked the van's ignition and observed that, while it was undamaged, it could be started by turning the key shroud.

NE#1 also noted a front passenger who wiped away the white substance on the center console as the Complainant exited the van. The passenger was also arrested.

As NE#1 transported the Complainant, the Complainant angrily argued that the van did not block traffic since NE#1's patrol vehicle could drive around it. The Complainant alleged NE#1 unlawfully stopped him and that NE#1 was racially motivated. Officers later confirmed the van was reported stolen on January 2, 2023.

C. Body-Worn Video (BWV)

NE#1's BWV showed NE#1 approaching a white van that significantly obstructed the road. NE#1 exited his patrol car and told the Complainant, "You're blocking the roadway." Other officers arrived, and NE#1 told them he stopped the Complainant for blocking the road, but NE#1 grew suspicious after seeing how the Complainant turned off the van and hearing the Complainant's questionable story about working at Business #1. NE#1 said he detained the Complainant to investigate possession of a stolen vehicle and DUI.

Finally, the BWV showed the interaction between the Complainant and NE#1 during transport. The Complainant accused NE#1 of lying after the Complainant observed patrol vehicles driving by the van. The Complainant argued that the van did not block the road. The Complainant called NE#1 a "fucking racist" and accused NE#1 of contacting him because he was Black. The Complainant yelled obscenities at NE#1 for several minutes. NE#1 told the Complainant he could raise his concerns with NE#1's sergeant.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.220-POL-2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

The Complainant alleged that NE#1 unlawfully stopped him.

SPD Policy 6.220-POL-2(1) governs *Terry* stops and stands for the proposition that *Terry* stops are seizures of an individual and, as such, must be based on reasonable suspicion to be lawful. SPD Policy defines a *Terry* stop as: “A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion to investigate possible criminal activity.” SPD Policy 6.220-POL-1. SPD Policy further defines reasonable suspicion as: “Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct.” *Id.* Whether a *Terry* stop is reasonable is determined by looking at “the totality of the circumstances, the officer’s training and experience, and what the officer knew before the stop.” *Id.* While “[i]nformation learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it “cannot provide the justification for the original stop.” *Id.*

Here, NE#1 conducted a valid *Terry* stop based on reasonable suspicion that the Complainant committed a crime. Under Seattle Municipal Code 11.72.040(A) (“Blocking or obstructing traffic”), a person is prohibited from stopping, standing, or parking a vehicle upon a roadway. NE#1 contacted the Complainant because the van obstructed a road. BWV showed that although the van did not entirely block the street, it significantly obstructed traffic. In his report and OPA interview, NE#1 articulated a “justification for the original stop.”

Moreover, after NE#1 contacted the Complainant, NE#1’s attention was drawn to “specific, objective, articulable facts” that triggered NE#1’s investigation into other criminal activity. Specifically, NE#1 saw a torch-style lighter in the Complainant’s hand, a white crystalline substance on the center console, and ignition issues making the van operable without keys. The Complainant also provided inconsistent stories about working for Business #1. NE#1 also knew the area was a “hotspot” for drug activity and stolen vehicles. Based on the totality of the circumstances and the officer’s training and experience, the seizure was warranted. At a minimum, the specific, objective, and articulable facts met the reasonable suspicion threshold required to detain an individual briefly.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

Named Employee #1 - Allegation #2

6.220-POL-2 Conducting a Terry Stop 7. Under Washington State Law, Traffic Violations Will Not Be Used as a Pretext to Investigate Unrelated Crimes

The Complainant alleged NE#1 executed a traffic stop as a pretext to investigate unrelated crimes.

Traffic violations may not be used as a pretext to investigate unrelated crimes. SPD Policy 6.220-POL-2(7). A pretextual stop is when an officer stops “a suspect for an infraction to investigate criminal activity for which the officer has neither reasonable suspicion nor probable cause.” *Id.* Pretextual stops are also prohibited by law. *Id.* “Officers must actually,



consciously, and independently determine that a traffic stop is reasonably necessary in order to address a suspected traffic infraction.” *Id.*

Here, the evidence indicates that the Complainant was not subjected to a pretextual stop. Instead, NE#1 contacted the Complainant for impeding traffic and subsequently, in plain view, saw indicators of drug use and possession and vehicle theft. No evidence suggests that NE#1 used this traffic violation as a pretext to investigate unrelated crimes.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #1 - Allegation #3

5.140-POL-2 Officers Will Not Engage in Bias-Based Policing

The Complainant alleged that NE#1 was racist and only contacted the Complainant because he was Black.

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. This includes different treatments based on the race of the subject. *See id.*

Here, OPA found no evidence that NE#1 engaged in bias-based policing based on race or another discernable trait. NE#1 never mentioned the Complainant’s race to the Complainant or other officers. Further, NE#1’s reasonable suspicion that the Complainant was engaged in criminal conduct—as outlined in Named Employee #1 – Allegation #1—was the obvious motivating factor for his detention and ultimate arrest.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**